

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**LOWERY BROS. INFINITI INC. d/b/n INFINITI  
OF SYRACUSE,**

*Plaintiff,*

-VS-

**INFINITI DIVISION OF NISSAN NORTH AMERICA,  
INC.,**

*Defendant.*

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**ORDER TO SHOW CAUSE  
AND TEMPORARY  
RESTRAINING ORDER**

Index No.  
RJ1 No.

13cv1258

Upon the reading and filing of the Verified Complaint dated September 23, 2013, the Affidavit of Gary P. Lowery, sworn to September 23, 2013, with exhibits, the Affirmation of Jon P. Devendorf, affirmed to September 23, 2013, with exhibits, the Memorandum of Law dated September 23, 2013, and the arguments of counsel for Plaintiff herein, it is hereby

**ORDERED**, that Defendant show cause, at a Motion Term of this Court to be held at the U.S. District Court, 15 Henry St., Binghamton  
~~Onondaga County Courthouse, 401 Montgomery Street, Syracuse, New York~~, on the 25<sup>th</sup> day of October, 2013, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why a further Order should not be entered:

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- (i) preliminarily restraining and enjoining Defendant along with its divisions, subsidiaries and/or affiliates during the pendency of this action from taking any further action against Plaintiff under, concerning and/or in furtherance of the Notice of Termination dated July 9, 2013; and
  - (ii) preliminarily restraining and enjoining Defendant along with its divisions, subsidiaries and/or affiliates during the pendency of this action from any act or omission inconsistent with or adverse to Plaintiff's rights under the Infiniti Dealer Sales and Service Agreement dated August 23, 2006; and
  - (ii) tolling and staying the Notice of Termination dated July 9, 2013 (effective as of the date of this Order) during the pendency of this action; and it is hereby further

**ORDERED**, that until the final determination of Plaintiff's application for a preliminary injunction, and the entry and service of an Order on that motion:

- (i) Defendant along with its divisions, subsidiaries and/or affiliates are temporarily restrained and enjoined from taking any further action against Plaintiff under, concerning and/or in furtherance of the Notice of Termination dated July 9, 2013; and
- (ii) Defendant along with its divisions, subsidiaries and/or affiliates are temporarily restrained and enjoined from any act or omission inconsistent with or adverse to Plaintiff's rights under the Infiniti Dealer Sales and Service Agreement dated August 23, 2006; and
- (iii) the Notice of Termination dated July 9, 2013 is tolled and stayed (effective as of the date of this Order); and it is hereby further

**ORDERED**, that service of a copy of this Order and of the papers upon which the same is granted upon the Defendant, by overnight mail to Jeffrey Harris, Regional Vice President, c/o Infiniti, East Region, 1501 Cottontail Lane, Somerset, New Jersey 08873 on or before October 11, 2013 shall be deemed good and sufficient service thereof; and it is hereby further

**ORDERED**, that answering papers, if any, shall be served and filed by Defendant so as to be received, in hand, by counsel for Plaintiff no later than 9:00 a.m. on October 21, 2013 ~~days before the return date of this Show Cause Order and that reply papers, if any, shall be served by or as to be received in hand by counsel for Defendant no later than xxxxxx days before the return date of this Show Cause Order.~~

A copy of this Order shall be served on Defendant's counsel, Diane C. Hertz, Bingham McCutchen LLP via e-mail to [diane.hertz@bingham.com](mailto:diane.hertz@bingham.com) on or before 9:00 a.m. on October 11, 2013.

**DATED:** October 10, 2013  
Binghamton New York

*Thomas J. M. Argy v s D J*